

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-386
)	
AT&T Broadband)	NAL/Acct. No.200332700018
Operator of Cable Television System FL0398, PSID)	
005852)	FRN 0007645823
Jacksonville, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 24, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find AT&T Broadband apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Sections 76.605(a)(12) and 76.611(a)(1) of the Commission’s Rules (“Rules”)¹. Specifically, we find AT&T Broadband apparently liable for failing to comply with the Commission’s cable signal leakage standards.

II. BACKGROUND

2. On August 7 and 8, 2002, agents of the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) inspected a portion of AT&T Broadband’s cable system serving Jacksonville, Florida to identify leaks and determine compliance with the basic signal leakage criteria. The agents identified and measured twelve leaks on the frequency 121.2625 MHz, ranging in signal strength from 51 microvolts per meter (“ $\mu\text{V}/\text{m}$ ”) to 2,442 $\mu\text{V}/\text{m}$. Based on these measurements, the agents calculated the system’s Cumulative Leakage Index (“CLI”) at a value of 70.9, exceeding the allowable cumulative signal leakage performance criteria of 64.² (See Attachment B.)

3. On August 9, 2002, the FCC agents met with AT&T Broadband staff at their office in Jacksonville, Florida and verbally ordered AT&T Broadband to cease operation on aeronautical band frequencies until the leaks were repaired and the system complied with the basic signal leakage criteria. The Tampa Office followed the oral order with a written *Order to Cease Operations*, delivered by facsimile on August 9, 2002.³

¹ 47 C.F.R. §§ 76.605(a)(12) and 76.611(a)(1).

² A maximum CLI of 64 is the basic signal leakage performance criteria of Section 76.611(a)(1) of the rules. Leakage that exceeds this level is deemed to pose a serious threat to air safety communications. The calculated CLI included only leaks greater than 50 $\mu\text{V}/\text{m}$.

³ See 47 C.F.R. 76.613(c).

4. In accordance with the *Order to Cease Operations*, AT&T Broadband was required to complete an inspection of at least 75% of the system's cable plant, make the necessary repairs to bring the system into compliance and submit a report of their findings. AT&T Broadband complied with the *Order to Cease Operations* and requested authority to resume operations later that same day. In their report, over 75 additional signal leaks were reported that exceeded the basic signal leakage criteria.

III. DISCUSSION

5. Section 76.605(a)(12) of the Rules requires cable operators to limit signal leakage in the frequency band from 54 MHz up to and including 216 MHz to 20 μ V/m at a distance of 3 meters. On August 7 and 8, 2002, AT&T Broadband exceeded this limit at twelve locations on its system in Jacksonville, Florida. Section 76.611(a)(1) of the Rules requires cable operators to limit the CLI to a value at or below 64. On August 7 and 8, 2002, AT&T Broadband's cable system in Jacksonville, Florida operated with a CLI value of 70.9. Furthermore, based on AT&T Broadband's discovery of over 75 additional signal leaks in excess of the basic signal leakage criteria, the CLI value exceeded 74.

6. Based on the evidence before us, we find that on August 7 and 8, 2002, AT&T Broadband willfully⁴ and repeatedly⁵ violated Sections 76.605(a)(12) and 76.611(a)(1) of the Rules.

7. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for the violations cited in this notice is \$8,000 (violation of rules relating to distress and safety frequencies).⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants an \$8,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ AT&T Broadband is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ The term "repeated" means the commission or omission of an act more than once or, if such commission or omission is continuous, for more than one day. 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

repeated violation of Sections 76.605(a)(12) and 76.611(a)(1) of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, AT&T Broadband SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to AT&T Broadband, 5934 Richard Street, Jacksonville, FL 32216.

FEDERAL COMMUNICATIONS COMMISSION

¹⁰ See 47 C.F.R. § 1.1914.

Ralph M. Barlow
District Director
Tampa Field Office, Enforcement Bureau

Attachments

ATTACHMENT B

System Location: Jacksonville, FL	System PSID: 005852	Frequency: 121.2625 MHz
Inspection Date(s): 8/7/2002 & 8/8/2002		
<u>Measurement Location</u>	<u>Signal Leakage Field Strength</u> (μ V/m @ 3 meters)	
Across Street from 7657 Old Middleburg Rd S Pole #7658	122	
6001 Old Middleburg Rd S Pole #5977	224	
7541 Brett Forest Dr Pole #7539	153	
7220 Bunion Dr Pole #7346	102	
7238 Bunion Dr Pole #7250	142	
SE Corner Camfield St /Hipps Rd Pole #8881	122	
8927 Barco Ln	2,442	
Across Street from 7243 Shindler Dr	92	
7256 Falcon Trace Dr W	2,442	
7771 Invermere Blvd	305	
SE Corner Collins Rd / Settlers Landing Trail S	407	
7745 Cloverleaf St	51	